IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4621 OF 2006.
IN
FIRST APPEAL ST.NO.22542 OF 2006.

New India Assurance Co.Ltd. ... Applicant.
Versus.
Smt.Prachi Prakash Raut & others. ...Respondents.

Shri I.R.Kulkarni for the Applicant.

Shri T.J.Mandon for the Respondents Nos.1 to 3.

Shri C.M.Lokesh holding for Shri G.S.Hegde for Respondent No.4.

CORAM : ABHAY S.OKA, J.

DATED : 28th November, 2007.

P.C.:

1. Heard the learned Advocate for the parties. A preliminary objection has been raised by the Advocate for the Respondents Nos.1 to 3 (Claimants in the claim petition filed under section 166 of the Motor Vehicles Act, 1988) that the Appeal at the instance of the Insurer of the offending vehicle is not maintainable as a leave contemplated by section 170 of the said Act of 1988 was not granted by the Tribunal. The learned Advocate appearing for the Applicant/Appellant has placed on record a certified copy of the application dated 8th July 2002 filed under section 170 of the said Act of 1988. On the said Application there is an endorsement made by the Advocate for the Respondents Nos.1 to 3 (original Claimants) "I leave it to Your Honour". However, there is no order passed on the said

application specifically granting the application. He submitted that the Claimants had given their no objection and due to inadvertence the order was not passed on the said application. He submitted that the parties proceeded on the assumption that the leave was granted and accordingly the Applicant/Insurance Company was allowed to defend the claim on merits.

2. The learned Counsel appearing for the Respondents Nos.1 to 3 has placed reliance on a decision of the learned Single Judge of this Court in the case of Oriental Insurance Co. v/s. K.M.George Kutty & another (2007 ACJ 359).

3. However, I find that the facts of the case before the learned Single Judge were different. It was not a case where the claimants had granted consent for grant of leave. In the present case the Advocate representing Claimants virtually granted consent for grant of leave.

4. Considering the controversy involved and the reasons for delay, the delay will have to be condoned and the Appeal will have to be admitted by keeping the issue of maintainability of the Appeal open. Hence Rule is made absolute in terms of prayer clause (a).

Judge.